

IN THE MATTER OF	:	BEFORE THE
CONSCIOUS CORNER, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 14-024V

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DECISION AND ORDER

On September 22, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Conscious Corner, LLC, for a variance to reduce the structure and use setback from 30 feet to six feet for a proposed drive aisle and retaining wall in a B-2 (Business: General) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Jack Gates and Sang Oh, Esquires, represented the Petitioner. David Thompson testified on behalf of the Petitioner. No one testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

- A. Aerial map of variance area
- B. Aerial photograph of vicinal existing conditions

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 5th Election District on

the southwest side of MD 108 (Clarksville Pike) about 1,000 feet north of MD 32. It is identified as Tax Map 34, Grid 6, Parcel 214, Lot 2 and known as 12202 Clarksville Pike (the Property).

2. Property Description. The 3.1-acre, irregularly shaped Property has access to MD 108 via a pipestem driveway on the northeasterly lot line. The northeasterly and northwesterly lot lines intersect the north lot line at sharp angles. The topography is relatively level, except in the northwest corner, which drops 20 in elevation from east to west. The Property is improved with a building developed under SDP 99-114 by the Luckstone Corporation. This building is to be demolished and the Property will be redeveloped with an approximately 21,757sf commercial building and associated parking, drive aisle and retaining wall under SDP 15-002, currently under review. The proposed building will be oriented across the central portion of the site and parking areas will be situated to the building's front and rear. The pipestem drive aisle will continue to provide access.

This pipestem drive aisle will run in a straight line along the northeasterly lot line and then turn sharply to follow the north lot line to provide access to the parking areas. Where these two lot lines meet, the drive aisle would be 24 feet wide. A 250-foot retaining wall is proposed along a portion of the drive aisle running along the north property, beginning at the intersection point of the two lot lines. This retaining wall will have a three-foot high chain link fence atop a 27" parapet wall with a maximum height of about 12 feet along a five-foot portion of the wall.

3. Vicinal Properties. The northern RC-DEO zoned 37-acre Parcel 185 is in agricultural use. All other adjoining parcels are zoned B-2. Parcel A-4, adjoining the front lot line is improved with several commercial buildings. The Clarksville Shopping Center adjoins the western lot line.

Across MD 108, the NT zoned properties are improved with various retail uses.

4. The Variance Request (Section 119.0.D.2.b). Petitioner is requesting a variance to reduce the 30-foot structure and use setback from a residential district to six feet for a proposed drive aisle and retaining wall.

5. David Thompson testified to being the project engineer. He testified to impact of the irregularly shaped property on project design. He explained that other B-2 properties are generally rectangular, with a more useable building envelope. Petitioner's Exhibit A is an aerial photograph of the Property. If the driveway were located in the southern area, the building would be pushed into a setback or reduced in size. Exhibit B is an aerial photograph depicting an adjoining property with a lesser setback than proposed in the instant petition. Landscaping will provide a visual buffer between the retaining wall and area uses.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with Section 130.0.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.0.B.2.(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

In this case, the Property's irregular shape impacts it disproportionately. The Hearing Examiner therefore concludes this physical condition is unique and results in practical difficulties in complying with the structure and use setbacks.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

There is no evidence of the requested variance substantially impairing the appropriate use or development of adjacent property and it will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioner did not create the practical difficulties.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed variance is for a reasonable use of the Property and therefore the minimum necessary to afford relief.

ORDER

Based upon the foregoing, it is this **14th Day of October 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

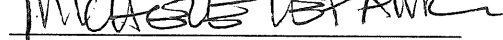
That the Petition of Conscious Corner, LLC, for a variance to reduce the structure and use setback from 30 feet to six feet for a proposed drive aisle and retaining wall in a B-2 (Business: General) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 10-15-14

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.